UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	***)***	
	)	
v.	***)***	***Criminal No. 02-125-P-C***
	)	
RICARDO L. VASQUEZ, a/k/a RICKIE DASQUEZ,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

Ricardo L. Vasquez, charged with using a means of interstate commerce (specifically, a computer and a telephone) to entice a person under the age of 18 to engage in sexual activity for which the defendant could be charged with a criminal offense (including, under Maine law, gross sexual assault and/or unlawful sexual contact) and traveling in interstate commerce for the purpose of engaging in such sexual activity, in violation of 18 U.S.C. §§ 2422(b) and 2423(b), seeks to suppress statements made before he was advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and any fruits of those statements. Indictment (Docket No. 4); Defendant's Motion To Supress [sic] Evidence ("Motion") (Docket No. 16).

An evidentiary hearing was held before me on February 10, 2003 at which the defendant appeared with counsel. Counsel for both sides were given an opportunity to submit post-hearing briefs, which were filed in due course. *See* Defendant's Post-Hearing Memorandum in Support of Motion To Suppress ("Defendant's Post-Hearing Brief") (Docket No. 23); Government's Post-Hearing Memorandum in Opposition to Motion To Suppress ("Government's Post-Hearing Brief")

(Docket No. 24). With the benefit of those memoranda, I now recommend that the following findings of fact be adopted and that the Motion be denied.

I. Proposed Findings of Fact

FBI special agent James Kenneth Lechner became involved in the instant case on November 4, 2002. He traveled several times to the home of a 13-year-old girl ("Juvenile") to interview her and to tape-record conversations she had with an adult male, believed to be "Rickie Dasquez." Based on those conversations, Lechner expected an adult male to travel to Maine to visit the Juvenile on or about December 12 or 13, 2002, bringing with him underwear and other items that might be used in performing sexual acts. Lechner expected the male to be wearing a Chicago Black Hawks hockey jacket, to arrive by bus in Portsmouth, New Hampshire and to travel to a certain hotel in Kittery, Maine.

On December 13, 2002 Lechner stationed himself at the hotel in question, and another FBI agent stationed himself near the bus terminal in Portsmouth. The agent in Portsmouth observed a Hispanic-looking male, possibly in his mid-30s, disembark from a commercial bus carrying a Black Hawks hockey jacket. The Portsmouth agent relayed that information to Lechner. FBI agents followed the male partway to the Kittery hotel. At the hotel, the male was observed exiting a pickup truck and carrying an article of luggage, a gym bag.

Lechner, pretending to be a hotel employee, approached the male – the defendant – and asked if his name was Rickie. The defendant asked why. Lechner said he had received a phone call for Rickie. The defendant asked from whom, and Lechner gave the first name of the Juvenile, stating: "She said she would be at the hotel at 11:15." Lechner asked, "Do you understand what I'm talking about?" and the defendant said, "Yes." Lechner inquired, "You are Rickie?" and the defendant responded, "Yes."

Another FBI agent stated, "Rickie, you're under arrest." The defendant said his name was not Rickie. After a quick safety search of the defendant's person, he was placed in handcuffs and taken to the Kittery Police Department ("KPD"). At KPD, the defendant was escorted to an interview room by Lechner and two other FBI agents, Edward J. Dzialo and John W. Dennison, and thoroughly searched. *See* FBI FD-302 Report dated December 23, 2002, Gov't Exh. A. No identification was found. *See id.* The bag, which had been approximately fifty yards away from the defendant at the time of the arrest and had been seized in connection therewith, also was placed in the interview room inasmuch as Lechner intended to ask the defendant's permission to search it or, if the defendant refused consent, seek a warrant for its search. The jacket, which had been with the luggage, also was seized and probably patted down as part of standard safety procedure.

Prior to the administration of any *Miranda* warnings, Lechner asked the defendant several questions, including his name, current address, date of birth, Social Security number, whether he could speak English, his educational background and whether he was using any medications or seeing a doctor for any physical or mental ailments. *See id*. The defendant answered the questions, telling the agents, among other things, that his name was Rickie Vasquez and, in response to a further question whether "Rickie" was his full name, that his name was "Ricardo." *See id*. After asking the defendant's name, address and Social Security number, Lechner asked him if he had any identification. The defendant responded that his ID was in the bag. *See id.* This pre-*Miranda* period of questioning lasted a total of nine minutes. *See id*.

Lechner then read the defendant his *Miranda* rights. *See id*. The defendant declined to be interviewed without speaking first with an attorney and refused to consent to a search of the bag. *See id*. The interview was terminated, *see id*., and a warrant was obtained to search the bag.

Lechner testified that his purpose in asking the pre-*Miranda* questions at KPD was twofold: to

obtain background information and to ascertain whether the defendant understood him, could communicate with him and likely would understand his *Miranda* rights. Lechner stated that he usually asks the same questions of everyone whom he has placed under arrest.

Lechner acknowledged that, at the time of the defendant's arrest, he knew that an issue in the case would be whether the defendant was the person who had been speaking to the Juvenile on the telephone, that he wanted to find out whether the defendant was in fact that person and that this was a motivation in sitting down to interview him following his arrest. He also acknowleged that at the time of the "background" interview he knew that the defendant had no identification on his person. He stated that although he "could have presumed" the defendant's identification was in the bag, he did not know whether the defendant even had any identification. Lechner denied that at the time of the interview he was particularly interested in finding out who owned the bag inasmuch as he was confident that agents could establish the defendant's ownership of it.

II. Discussion

In his post-hearing brief, the defendant clarifies that he moves to suppress all statements made at KPD concerning his identity, age or ownership of the bag subsequently searched pursuant to a search warrant. Defendant's Post-Hearing Brief at 1. There is no dispute that these statements were obtained as a result of custodial interrogation that took place prior to the administration of *Miranda* warnings.[1] The only issue is whether they are nonetheless admissible pursuant to the so-called "routine booking exception" to the *Miranda* rule, which "exempts from *Miranda's* coverage questions to secure the biographical data necessary to complete booking or pretrial services." *Pennsylvania v.*

[1] Per *Miranda*, an accused must be advised prior to custodial interrogation "that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda*, 384 U.S. at 478-79.
(*continued on next page*)

Muniz, 496 U.S. 582, 601 (1990) (citation and internal quotation marks omitted).

As the Supreme Court has observed, "recognizing a 'booking exception' to *Miranda* does not mean, of course, that any question asked during the booking process falls within that exception." *Id.* at 602 n.14 (citations and internal punctuation omitted). "Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, that are designed to elicit incriminatory admissions." *Id*. (citations and internal quotation marks omitted).

Although the exception is "phrased in terms of the officer's intention, the inquiry into whether [it] is thus inapplicable is actually an objective one: whether the questions and circumstances were such that the officer should reasonably have expected the question to elicit an incriminating response." *United States v. Reyes*, 225 F.3d 71, 76-77 (1st Cir. 2000). As the First Circuit has further elucidated:

> [W]e think that it would be a rare case indeed in which asking an individual his name, date of birth, and Social Security number would violate *Miranda*. We can imagine situations, of course, that would present a closer case than this one. For example, asking a person's name might reasonably be expected to elicit an incriminating response if the individual were under arrest for impersonating a law enforcement officer or for some comparable offense focused on identity; likewise, asking an individual's date of birth might be expected to elicit an incriminating response if the individual were in custody on charges of underage drinking; and questions about an individual's Social Security number might be likely to elicit an incriminating response where the person is charged with Social Security fraud. In such scenarios, the requested information is so clearly and directly linked to the suspected offense that we would expect a reasonable officer to foresee that his questions might elicit an incriminating response from the individual being questioned. In contrast, the appellant here was being booked on charges of participating in a criminal drug conspiracy, to which his name, date of birth, and Social Security number bore no direct relevance.

Id. at 77.

Measuring his case against this yardstick, the defendant contends that inasmuch as the central

focus of the FBI's investigation was whether he and "Rickie Dasquez" were one and the same, Lechner either intended or reasonably should have expected that the purportedly routine booking questions would elicit incriminating responses. Defendant's Post-Hearing Brief at 6. The defendant argues, in particular, that questions concerning his date of birth, his use of names other than "Ricardo" and whether he had any identification were particularly likely to elicit such a response. *Id*. at 7. I address each point in turn.

1. **Date of birth.** The defendant asserts that, inasmuch as his age is an essential element of the state crimes the attempted commission of which forms a predicate for the federal crimes of which he stands accused, his situation is analogous to that of the *Reyes* court's hypothetical individual in custody for underage drinking. *Id*. at 7. However, as the government points out, the state criminal statutes described in the indictment focus on the age of the victim, not that of the perpetrator. *See* Government's Post-Hearing Brief at 2-3; 17-A M.R.S.A. §§ 253(1)(B) (person is guilty of gross sexual assault if, *inter alia*, person engages in sexual act with another person, not the actor's spouse, who has not attained the age of 14), 255(1)(C) (person is guilty of unlawful sexual contact if, *inter alia*, person intentionally subjects another person, not the actor's spouse, to any sexual contact, the other person has not attained the age of 14 and the actor is at least three years older).[2] The defendant's age is irrelevant to the crime of gross sexual assault and relevant to the crime of unlawful sexual contact only to the extent the defendant was at least 16 years old, the Juvenile having been 13. Inasmuch as the defendant plainly appeared to be over 16 (appearing, in fact, to be in his mid-30s), the question posed could not reasonably have been calculated to elicit an incriminating response.

Moreover, as the government argues, *see* Government's Post-Hearing Brief at 1-2, the context

[2] The text of 17-A M.R.S.A. § 255(1)(C) was renumbered, effective January 31, 2003, to 255-A(1)(E).

of Lechner's questioning weighs in favor of a finding that the booking exception applies inasmuch as the question was one of a series Lechner typically asks to obtain background information and establish capacity to comprehend *Miranda* warnings. *See, e.g., Reyes*, 225 F.3d at 77 ("We think it significant that Smith asked only those questions indicated on the standard DEA booking form, with no reference whatsoever to the offense for which appellant had been arrested.").

2. **Use of nickname "Rickie."** The defendant posits that the question whether he used names other than "Ricardo" was likely to elicit an incriminating response inasmuch as the officers specifically wanted to know whether he also answered to the name "Rickie" – the name the suspect had used. Defendant's Post-Hearing Brief at 7. This argument does not square with the evidence adduced at hearing. Upon being asked his name, the defendant stated, "Rickie Vasquez." Only when then asked whether "Rickie" was his full name did he give the name "Ricardo." Thus, despite Lechner's professed overarching intent to establish that the defendant was indeed the same "Rickie Dasquez" who had previously communicated with the Juvenile, there is no evidence that he asked probing questions designed to elicit that "Rickie" was the defendant's nickname. Nor is this a case in which, as posited in *Reyes*, the identity of the suspect was so central to the crime charged that a reasonable officer would have known to administer *Miranda* warnings before asking, "What is your name?" *Compare Reyes*, 225 F.3d at 77 ("asking a person's name might reasonably be expected to elicit an incriminating response if the individual were under arrest for impersonating a law enforcement officer or for some comparable offense focused on identity").[3] Finally, the question (again) was one Lechner typically asks as part of his background check, regardless what the nature of

[3] Nor, under the circumstances, could a reasonable officer have been confident that the unvarnished question, "What is your name?" would lead to the incriminating response, "Rickie." Although the defendant had indicated his name was Rickie when initially speaking to Lechner (then impersonating a hotel clerk), he denied it was Rickie when placed under arrest.

the alleged crime.

3. **Request for Identification.** The defendant finally asserts that Lechner's request for identification was intended – or at the very least likely – to elicit exactly the incriminating response it got: that the identification was in the bag (thus establishing the defendant's ownership of the bag and its contents). Defendant's Post-Hearing Brief at 4, 7. The defendant notes that, at the time this question was asked, the officers knew he had no identification on his person. *Id*. He theorizes that, inasmuch as "virtually every adult in this country owns some means of identifying himself . . . [i]t seems likely the Agent hoped identification might be in the Bag. It could have been nowhere else, and the Bag was conveniently right in the interview room with the Agent and the defendant, precisely because, as Special Agent Lechner admitted, he hoped to search the Bag." *Id*. at 4-5. Despite its superficial appeal, the defendant's argument relies too heavily on the light of hindsight. As Lechner stated at hearing, he was not certain that the defendant possessed any identification at all. Moreover, it was equally plausible that any identification could have remained in the Black Hawks jacket, which likely had been patted down for weapons but not thoroughly searched. Finally, while Lechner admitted that he intended to search the bag by consent or warrant, he denied that he had any particular concern about attempting to establish the defendant's ownership of it inasmuch as the agents' prior observations had adequately evidenced that fact. Under the circumstances (which included FBI agents' close observation of the defendant from the moment he disembarked the bus in Portsmouth until his arrest in Kittery), this denial rings true. Inasmuch as appears, Lechner's identification question again simply was part of his standard repertoire.

In summary, I find that Lechner did not intend or anticipate (and a reasonable officer in his position would not reasonably have expected) that his pre-*Miranda* background questions would elicit incriminating responses. Therefore, even to the extent his questions did elicit incriminating responses,

the booking exception to *Miranda* applies. *See United States v. Sweeting*, 933 F.2d 962, 965 (11th Cir. 1991) ("An officer's request for 'routine' information for booking purposes is not an interrogation under *Miranda*, even though that information turns out to be incriminating.").

III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to suppress evidence be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 18th day of February, 2003.

David M. Cohen
United States Magistrate Judge

U.S. District Court
District of Maine (Portland)
CRIMINAL DOCKET FOR CASE #: 2:02-cr-00125-GC-ALL
Internal Use Only

Case title: USA v. VASQUEZ
Other court case number(s): None **Date Filed:** 12/17/02
Magistrate judge case number(s): 2:02-mj-00066

Assigned to: JUDGE GENE

CARTER
Referred to:

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